IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.53 OF 2005

Seemaben Shankerlal Patel Applicant

Vs.

Municipal Corporation of Gr.Bombay & ors. Respondents

Mr.Deepak J. Lulia for applicant.

Ms.G.S.Joglekar for Resp.no.1.

Mr.M.V.Pandey for Resp.No.2.

CORAM: B.H.MARLAPALLE,J.

June 08, 2005.

P.C.:

1. In L.C.Suit No.2238 of 2002 initiated by the plaintiff she filed Contempt Notice of Motion No.126 of 2003 with the following prayers:

> (a) That the Defendant No.2 be committed to Civil prison for a term not exceeding 3 months or such other terms as this Hon'ble Court may award for Defendant No.2, having committed willful and intentionally breach of order dated 24.04.2002 and order dated 22.08.2002 passed in Notice of Motion No.1578 of 2002 in L.C. Suit No.2238 of 2002 by constructing tarpaulin cum patra shed on 15.08.2002 and doing the business activity of parking, repairing cycles, scooters, hand card and doing his business activity and committing trespass upon the open compound from 15.08.2002 and onwards till date

and thereby committing contempt of this Hon'ble Court;

(b) that the Defence of the Defendant No.2 be struck up since the Defendant No.2 has committed breach of order dated 24.04.2002 and order dated 22.08.2002 passed in Notice of Motion No.1578 of 2002 in L.C.Suit No.2238 of 2002 under Order 39 R. 11A of C.P.C. 1908;

(c) Direct the Inspector of Police and/or Police Officer of Dindhoshi Police Station, Malad (E), Mumbai 400 097, to implement Court order dated 22.8.2002;

(d) that the Defendants be ordered and directed to remove the said tarpoline cum patra shed constructed in the compound of suit property and in the alternative the Plaintiff be allowed to remove the said tarpoline cum patra shed at the costs of the Defendant No.2.

The said contempt notice of motion has been dismissed by the impugned order dated 6/11/2004.

2. The suit is still pending and, therefore, having regards to the scheme of the amended Section 115 of C.P.C. this revision application challenging the order dismissing the contempt notice of motion is not tenable.

3. The CRA is, therefore, dismissed as not tenable with liberty to take out appropriate proceedings as may be permissible in law.

(B.H.MARLAPALLE,J.)